



FILED
DISTRICT COURT OF GUAM

AUG - 9 2004

MARY L. M. MORAN
CLERK OF COURT

28

Office of the Attorney General

Douglas B. Moylan

Attorney General of Guam

Civil Division

Guam Judicial Center, Suite 2-200E

120 West O'Brien Drive

Hagåtña, Guam 96910 • USA

(671) 475-3324 • (671) 472-2493 (Fax)

www.guamattorneygeneral.com • law@mail.justice.gov.gu

Attorneys for the Government of Guam

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

THE GOVERNMENT OF GUAM, by and
through the ATTORNEY GENERAL OF
GUAM,

Plaintiff,

vs.

FELIX P. CAMACHO, in his official capacity
as Governor of Guam,

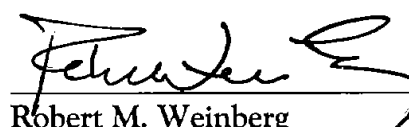
Defendant.

Civil Case No. 04-00035

NOTICE OF APPEAL

NOTICE is hereby given that THE GOVERNMENT OF GUAM, by and through the ATTORNEY GENERAL OF GUAM, plaintiff in the above-styled case hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment and Order entered in this action on the 2nd day of August, 2004.

OFFICE OF THE ATTORNEY GENERAL
DOUGLAS B. MOYLAN, Attorney General of Guam



Robert M. Weinberg
Assistant Attorney General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

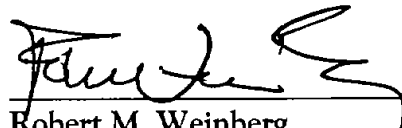
This is to certify that I have this day served opposing counsel with a copy of the foregoing by hand delivery, or by depositing same in the United States Mail, postage prepaid, and properly addressed to:

Shannon Taitano, Esq.
Legal Counsel, Governor's Office
P.O. Box 2950
Hagåtña, Guam 96932

Michael A. Pangelinan, Esq.
Calvo and Clark, LLP
Attorneys at Law
655 South Marine Corps Drive, Suite 202
Tamuning, Guam 96911

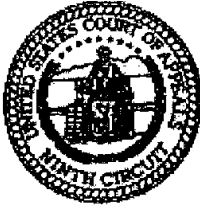
this 9th day of August, 2004.

OFFICE OF THE ATTORNEY GENERAL
DOUGLAS B. MOYLAN, Attorney General of Guam


Robert M. Weinberg
Assistant Attorney General

A-11 (rev. 5/00)

USCA DOCKET # (IF KNOWN)



**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: The Government of Guam by and through the Attorney General of Guam vs. Felix Camacho, in his official capacity as Governor of Guam	DISTRICT: District Court of Guam		JUDGE: John C. Coughenour, United States Chief District Judge for the Western District of Washington
	DISTRICT COURT NUMBER: Civil Case No. 04-00035		
	DATE NOTICE OF APPEAL FILED: August 9, 2004	IS THIS A CROSS-APPEAL? No. <input type="checkbox"/> YES	
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): N/A		

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

This civil action arises under 48 U.S.C. § 1421g(d), the Territory of Guam's Organic Act, relating to the powers and duties of the Office of Attorney General for the Territory of Guam as established by the U.S. Congress. Plaintiff-appellant seeks relief in the nature of *quo warranto* against the Governor of the Territory of Guam, Felix P. Camacho, who is unlawfully usurping the functions, powers, duties and Office of the Attorney General, by attempting to investigate and oversee the prosecution of suspected criminal wrongdoing in the Territory of Guam. Plaintiff sought, *inter alia*, a declaratory judgment and appropriate preliminary and permanent injunctive relief against the Governor enjoining him from attempting to exercise any authority with respect to the investigation and/or prosecution of alleged criminal wrongdoing within the Territory of Guam.

On August 2, 2004, the trial court dismissed the action without prejudice on the basis that plaintiff's claims were not ripe for review and that the court was therefore without jurisdiction.

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Whether the trial court erred in dismissing this case without prejudice on the grounds that the issue presented – whether the Governor of Guam was usurping the powers and duties of the Attorney General of Guam under the Organic Act, 48 U.S.C. § 1421(g) by directing the conduct of a criminal investigation into alleged wrongdoing within the Territory of Guam -- was not ripe for review and therefore non-justiciable.


PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): While the trial court referred to a pending case in the Superior Court of Guam in which the Attorney General could possibly raise the claims presented here, appellant does not believe that case will have a bearing on the issues presented.

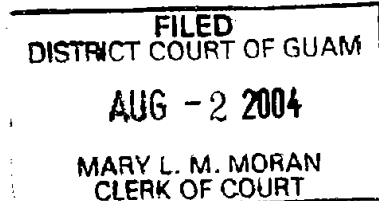
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING: No.

- ☐ Possibility of settlement
- ☐ Likelihood that intervening precedent will control outcome of appeal
- ☐ Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____
- ☐ Any other information relevant to the inclusion of this case in the Mediation Program _____

☐ Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

LOWER COURT INFORMATION			
JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> Other (Specify):	<input checked="" type="checkbox"/> Final Decision of District Court <input type="checkbox"/> Interlocutory Decision Appealable As of Right <input type="checkbox"/> Interlocutory Order Certified by District Judge (Specify): <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Default Judgment <input checked="" type="checkbox"/> Dismissal/jurisdiction <input type="checkbox"/> Dismissal/merits <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Judgment/court Decision <input type="checkbox"/> Judgment/jury Verdict <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Judgment as a Matter of Law <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Damages: Sought \$ Awarded \$ <input checked="" type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Granted <input checked="" type="checkbox"/> Denied <input type="checkbox"/> Attorney Fees: Sought \$

		Awarded \$ <input type="checkbox"/> Pending <input type="checkbox"/> Costs: \$
CERTIFICATION OF COUNSEL		
I CERTIFY THAT: 1. Copies of Order/Judgment Appealed Form Are Attached. 2. A Current Service List or Representation Statement With Telephone and Fax Numbers Are Attached (See 9th Cir. Rule 3-2). 3. A Copy of This Civil Appeals Docketing Statement Was Served in Compliance with FRAP 25. 4. I Understand That Failure to Comply With These Filing Requirements May Result in Sanctions, Including Dismissal of This Appeal.		
 Signature	<u>August 9, 2004</u> Date	
COUNSEL WHO COMPLETED THIS FORM		
NAME: Robert M. Weinberg		
FIRM: Guam Attorney General's Office		
ADDRESS: Suite 2-200E, 120 West O'Brien Dr., Hagatna Guam 96910		
E-MAIL: rob_weinberg2003@yahoo.com		
TELEPHONE: (671) 475-3324		
FAX: (671) 472-2493		
* This Document Should Be Filed in The District Court With The Notice of Appeal * * If Filed Late, it Should Be Filed Directly With the U.S. Court of Appeals *		



6 DISTRICT COURT OF GUAM
7 TERRITORY OF GUAM

8 THE GOVERNMENT OF GUAM, by and
9 through the ATTORNEY GENERAL OF
10 GUAM,

11 Plaintiff,

CIVIL CASE NO. 04-00035

12 vs.

J U D G M E N T

13 FELIX P. CAMACHO, in his official
14 capacity as GOVERNOR OF GUAM,

Defendant.

15 Judgment is hereby entered in accordance with the Order filed August 2, 2004.

16 Dated this 2nd day of August, 2004, Hagatna, Guam.

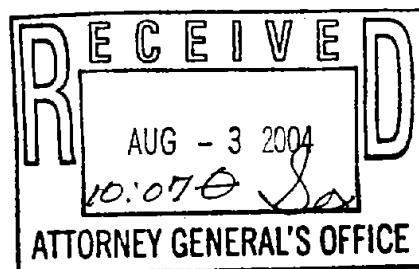
17
18 MARY L. M. MORAN
19 Clerk of Court

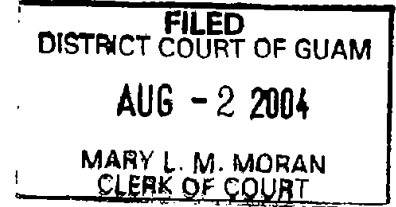
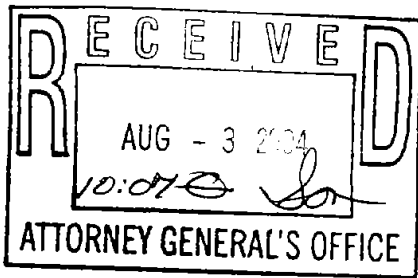
20 By: /s/ Shirlene A. Ishizu
21 Deputy Clerk

22
23
24
25 Notice is hereby given that this document was
26 entered on the docket on AUG - 2 2004.
27 No separate notice of entry on the docket will
28 be issued by this Court.

Mary L. M. Moran
Clerk, District Court of Guam

By: [Signature] AUG - 2 2004
Deputy Clerk Date





6 DISTRICT COURT OF GUAM
7 TERRITORY OF GUAM

24

8
9 THE GOVERNMENT OF GUAM, by and
10 through the ATTORNEY GENERAL OF
11 GUAM,

Civil Case No. 04-00035

11 Plaintiff,

12 vs.

13 FELIX P. CAMACHO, in his official
14 capacity as GOVERNOR OF GUAM,

ORDER

14 Defendant.

15
16 This case is before the Court on an *Ex Parte* Application for Issuance of Order to Show
17 Cause and Temporary Restraining Order and Motion for Preliminary Injunctive Relief (the
18 "Application for TRO"), filed by the plaintiff Attorney General of Guam (the "Attorney
19 General") on July 13, 2004. The defendant Governor of Guam (the "Governor") filed a
20 Memorandum in Opposition to the Application for TRO on July 15, 2004. On July 22, 2004, the
21 Attorney General filed a reply brief.¹ After reviewing all the pleadings and relevant caselaw, the
22 Court hereby DISMISSES this case on the ground that it is not ripe for judicial review.

23 ///

24 ///

25 ///

26
27 ¹ This pleading, entitled "Plaintiff's Reply to Defendant's 'Memorandum in Opposition to
28 Issuance of Order to Show Cause and Temporary Restraining Order'" and docketed as Docket No.
19, shall be referred to as the "Reply Brief."

BACKGROUND

In November 2002, Douglas B. Moylan was elected² to the position of Attorney General of Guam. The Organic Act of Guam, which functions as Guam's constitution, provides that "[t]he Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam." 48 U.S.C. § 1421g(d)(1).

On or about May 21, 2004, the Governor's Chief of Staff wrote a memorandum to the Chief of Police for the Guam Police Department requesting that he initiate an investigation into possible violations of Guam procurement laws by the Attorney General's Office. (Reply Brief, D.B. Moylan Decl. at ¶2 and Exhibit A thereto, Docket No. 19.) The memorandum further requested that the "findings be turned over to the Governor's Legal Counsel who can then determine whether [the] investigation warrants the appointment of a Special Prosecutor, who can then make the determination on whether criminal charges should be filed." (*Id.*)

On or about July 1, 2004, the Attorney General wrote to the Governor and "demand[ed] that the results of the investigation be disclosed" to his office as he believed that the Governor had "no authority under the Organic Act to appoint a 'special prosecutor.'" (M.A. Pangelinan Decl. at 2 and Exhibit A thereto, Docket No. 13.) The Attorney General claimed that the "appointment [of a special prosecutor] would be considered an unlawful and inorganic usurpation [sic] of the powers and duties of the Office of the Attorney General." (*Id.*)

On or about July 6, 2004, the Governor responded to the Attorney General's letter. (Verified Complaint in *Quo Warranto* at ¶8 and Exhibit 1 thereto, Docket No. 1.) The Governor declared that he was "responsible for the faithful execution of the laws of Guam," and that with such responsibility "comes the ability to appoint, when appropriate, a special prosecutor to perform prosecutorial functions whenever there is a conflict that would preclude the Office of the Attorney General from representing the People or the government of Guam." (*Id.*) The

² Prior to the 2002 election, the Attorney General of Guam was appointed by the Governor of Guam with the advice and consent of the Guam Legislature. In 1998, however, Congress amended the Organic Act of Guam to permit the Guam Legislature to provide for the election of the Attorney General of Guam. 48 U.S.C. § 1421g(d). In 1999, Guam Pub. L. 25-44 (codified at 5 Guam Code Ann. § 30101) was enacted to create an elected Attorney General of Guam.

1 Governor further stated that “[b]ecause the investigation pertains to possible wrongful actions by
2 the Office of the Attorney General, I am precluded from disclosing to you the results from an
3 ongoing investigation into the activity of the Office of the Attorney General.” (*Id.*)

4 Thus, on July 13, 2004, the Attorney General initiated the present action seeking
5 declaratory relief and the issuance of preliminary and permanent injunctions enjoining the
6 Governor from “exercising or attempting to exercise any of the powers and duties of the Office
7 of the Attorney General by, *inter alia*, exercising any authority with respect to the investigation
8 and/or prosecution of suspected crimes or criminal activity within the Territory of Guam.”

9 ANALYSIS

10 Before the Court can address the merits of the Application for TRO, the Court must first
11 determine whether it has jurisdiction over the action. The Governor asserts that a temporary
12 restraining order cannot issue because there is no justiciable case or controversy before the
13 Court.³ The Governor contends that he has not stated that he will appoint a special prosecutor to
14 investigate or prosecute the Attorney General’s Office. Rather, the Governor asserts that he has
15 merely requested the Guam Police Department to investigate potential violations of Guam
16 procurement laws by the Attorney General’s Office.

17 The Attorney General, on the other hand, maintains that there is nothing premature or
18 speculative about this controversy. The Attorney General believes this action is ripe for review
19 because the Governor has refused to reveal the results of the investigation to his office.

20 In determining whether an action is ripe, courts inquire into: (1) whether the issue is fit
21 for judicial decision; and (2) hardship to the parties if review is withheld. Assiniboine and Sioux
22 Tribes v. Bd. of Oil and Gas Conservation, 792 F.2d 782, 788 (9th Cir.1986). A case is
23 considered ripe for review when all of the essential facts establishing the right to declaratory
24 relief have already occurred. Central Mont. Elec. Power Coop. v. Administrator of the Bonneville

25
26 ³ Because the issue of ripeness has been raised, the Court may consider dismissal as a
27 remedy though not specifically requested by the Governor. See Gemtel Corp. v. Community
28 Redevelopment Agency, 23 F.3d 1542, 1544 n. 1 (9th Cir.1994) (mootness and ripeness properly
challenged under Rule 12(b)(1)).

1 Power Admin., 840 F.2d 1472, 1474 (9th Cir.1988). "A claim is not ripe for adjudication if it
2 rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at
3 all.'" Texas v. United States, 523 U.S. 296, 118 S.Ct. 1257, 1259, (1998) (quoting Thomas v.
4 Union Carbide Agric. Prods. Co., 473 U.S. 568, 581, 105 S.Ct. 3325 (1985) (internal quotation
5 omitted)).

6 In this case, the Attorney General's request to have this Court declare that the Governor
7 has no authority under the Organic Act of Guam to appoint a special prosecutor is not ripe for
8 review since the Governor has not yet appointed a special prosecutor to prosecute possible
9 procurement violations. The Governor has merely stated that one would be appointed "when
10 appropriate." (Verified Complaint in *Quo Warranto* at ¶8 and Exhibit 1 thereto, Docket No. 1.)
11 If and when the Governor appoints a special prosecutor as the Attorney General anticipates, then
12 this action will be ripe for adjudication. As for now, however, the Attorney General's claim is
13 contingent on a future event that may not occur as anticipated. If the results of the investigation
14 show no wrongdoing on the part of the Attorney General's Office, then there would be no need
15 for the Governor to appoint a special prosecutor,⁴ and this case would be moot.

16 Additionally, the Court does not believe that the Attorney General would suffer any
17 prejudice if the Court withheld review. The Court is aware of a pending criminal case in the
18 Superior Court of Guam against the Attorney General, which was brought by a special prosecutor
19 appointed by the Governor.⁵ The Attorney General continues to function in his role even though
20 a special prosecutor was appointed by the Governor since September 2003. Obviously that
21 appointment by the Governor of a special prosecutor has not resulted in irreparable injury to the

22 ///

23 ///

24
25 ⁴ This is evident from the letter written by the Governor's Chief of Staff to the Chief of
26 Police: "However, if this is simply an administrative or personnel concern I ask that this matter be
27 afforded the confidentiality that all investigations warrant." (Reply Brief, D.B. Moylan Decl. at ¶2
and Exhibit A thereto, Docket No. 19.)

28 ⁵ People of Guam v. Moylan, Superior Court of Guam Criminal Case No. CM864-03.

1 Attorney General's operations.⁶

2 The Court concludes that this case is not ripe for review since all of the essential facts
3 establishing the Attorney General's right to declaratory relief have not yet occurred.

4 Accordingly, the Court dismisses this case without prejudice for lack of jurisdiction.

5 SO ORDERED this 2nd day of August, 2004.

6 
JOHN C. COUGHENOUR*

7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19

20 Notice is hereby given that this document was
entered on the docket on 08-02-04.
21 No separate notice of entry on the docket will
be issued by this Court.

22 Mary L. M. Moran
Clerk, District Court of Guam

23 By: 

Deputy Clerk

24 Date
25
26
27
28

⁶ The Superior Court of Guam may be an appropriate forum for the Attorney General to raise his claims since an actual case brought by an appointed special prosecutor is currently pending before it.

* The Honorable John C. Coughenour, United States Chief District Judge for the Western District of Washington, sitting by designation.